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INSIGHT

BY MIKE CAUSEY

Will High-Five Make a Come-Back?

For as long as I've been in this business—covering the people side of the government—I've made it a point to never hype an issue. During pending (and real) government shutdowns, I'm the guy who said life-goes-on-and-you-won't-lose-a-nickel!



When there were plans afoot to freeze federal pay (President Clinton in 1993), or cut retirement benefits (Carter, Reagan, Clinton), I'm the guy who said watch it, but don't lose any sleep. Because it's not nice to scare people—make it worse than it actually is—when there is no reason for them to be overly afraid.

And while I continue to be the same glass-is-half-full (as opposed to half-empty) kind of guy, I have a message. Be afraid. Be very afraid. Because....

The next president and the next Congress—whether that is a Republican, a Democrat, a Whig or whatever—is likely to take a very long, hard look at the federal retirement system. And, especially if that Congress contains lots of new members, it won't much like

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Military Missions Squeeze U.S. Forces

Keeping Department of Defense (DoD) deployments in Iraq and Afghanistan at their current levels—often averaging 170,000 and 17,000, respectively—is an unsustainable proposition, according to a new government report.

"The demands made on the force...are more than the available U.S. land forces can sustain while meeting the Army's and DoD's benchmarks," said a Congressional Budget Office (CBO) report.

The "benchmark" maximum sustainable number of troops the U.S. should deploy in Iraq, according to the report, would be roughly 123,000. Yet the Pentagon has (since April 2003) frequently deployed fully one-third more men and women than that in Iraq—a situation that ultimately could "exhaust" the Army, CBO said.

Still, the report offered some good news for those favoring sustained deployments in Iraq. The CBO's new estimate is significantly higher than it was in 2003, when the office said the U.S. could sustain a maximum of 106,000 troops in Iraq. That number has been raised partly by redeploying U.S. troops from South Korea and Okinawa and drawing down the U.S. military mission in Bosnia.

The CBO said the bulk of U.S. forces deployed to operations in the two nations are from Army and Marine units, supplemented by sizable numbers of National Guard and Reserve units.

The report also notes that some 30,000 U.S. military troops outside Iraq are occupied supporting those in

the country.

Furthermore, to keep sufficient forces in Iraq without resorting to growing the military, DoD "has adopted a de facto dwell-time standard of one year at home for every year deployed."

For every year deployed, regular military units must return for at least a year to their home bases. But with some units deploying for a third time in Iraq after such limited breaks at home, the report questioned this policy's sustainability.

As tough as the report is in calculating the unsustainability of U.S. force levels in Iraq, it addresses only the short-term question of whether the forces deployed will remain fresh enough—according to benchmarks—to do their jobs effectively. A longer-term issue is reenlistment.

Larry Korb, a former assistant secretary of defense in the Reagan administration and an analyst with the Center for Defense Information, a Pentagon watchdog group, warns of the potential for a crisis in recruiting.

"The U.S. Army is too small to implement Bush's regime change strategy," Korb told *Federal Employees News Digest*. "Right now, we have 152,000 in Iraq. If to sustain that you have to send people back for a third tour, you're going to impact retention."

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INSIGHT by Mike Causey

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what it sees. Nor will you.

From time to time, the federal retirement program, the old Civil Service Retirement System, finds itself under the budget-cutter/reformers' microscope. People talk about trimming here, extending there or cutting off something or other. Sort of like a podiatrist speculating about somebody with really, really bad bunions.

But the track record is clear. Over the past 30-plus years, Congress has done nothing but improve the federal retirement system, which, today, is the centerpiece of the government's benefits...and the envy of the private sector.

In 1969, Congress changed the retirement calculation formula by substituting the average of the employees' highest three-year salary. Before that, the high-five formula was used. At the time, nobody in government sued to stop the government from improving things.

Now, however, Congress is—for the fifth or sixth time in 20 years—looking at what might be saved if it went back to the high-five system. The fact that it is even being considered, as one of the many options that cost-cutters are looking at, has sent shock waves through many federal offices.

That's even though:

- This is not considered a serious proposal, this late in the Congress.
- The high-three back to the high-five is a "threat" that comes up every couple of years, under Democratic and Republican regimes.
- The projected savings are years away. Congress could authorize the high-five but most members would be retired themselves before any substantial savings were realized. What's needed, to help pay for Katrina, is money right now.
- Finally, if the worst happened and the high-three was replaced by a return to the high-five, it would not be the end of civilization as we know it. People who say it would force them

to work years more aren't very good at math. (I can say that because I'm even worse.) But according to a study done by the Government Accountability Office some years ago, the typical fed would have to work only about five to nine months more under a high-five system to get the same annuity he or she would get right now under the high-three formula.

• One more thing. Feds have said that IF the high-three is replaced, somebody should sue. The question is who? And what? As a very pro-fed lobbyist pointed out, "nobody sued when they switched to the more generous high-three formula so it is unlikely that anybody would sue...with any hope of winning...if they went back to the original formula." Congress, after all, makes the laws. And it can take back what it giveth.

So for the rest of this year you can probably relax. But next year, cover your assets. How come? Read the papers.

You can't look at the business section—sometimes the front page—without a report of a major company going out of business, filing for bankruptcy or dropping its retirement plan, or its health insurance program. Or both.


Companies that once offered lifetime employment, good health benefits and a decent (usually noncontributory) pension are now very much in the minority.

None of those—the minority—that have or had retirement plans help retirees keep pace with inflation. In private companies a COLA (which is a cost of living adjustment to feds) is something you drink.

It is very unlikely that Congress or the White House will make any kind of run at the federal retirement plan this year. Or even next year. But the year after—when we pick a new Congress and this president is the ultimate lame duck—look out.

Cover your assets, starting with your retirement program, which is fast becoming a very, very politically and fiscally attractive target!

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Korb, recalling Vietnam said, "That's usually the breaking point for people who haven't been in for 10 years—a third tour." 

...

Comparing Federal, Private Sector Job Satisfaction

Federal employees are more committed to their jobs than two years ago. They are more likely than private-sector workers to cooperate to get things done, to feel they have opportunities to improve their skills, and to have enough information to do their jobs well, according to a new analysis by Sirota Survey Intelligence, of

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Sirota also found, however, that federal employees are less satisfied with the recognition they receive from their employers than private-sector workers, and they are less satisfied with their immediate supervisors, and less likely to feel encouraged to come up with new and better ways of doing things.

Sirota further said that federal employees were found to be more likely than top private-sector company employees to believe that:

- People they work with cooperate to get things done (85 percent for federal employees vs. 77 percent for private-sector employees).
- They like the kind of work they do (83 percent vs. 75 percent).
- They receive adequate support from their supervisors in balancing their work and family matters (79 percent vs. 74 percent).
- They have enough information to do their jobs well (74 percent vs. 71 percent).

On the flip side, Sirota said federal employees were found lagging behind private-sector employees in these areas:

- the performance of their immediate supervisors (65 percent vs. 75 percent);
- encouragement to find new and better ways of doing things (60 percent vs. 68 percent);
- recognition they receive (49 percent vs. 55 percent); and
- satisfaction with disputes being resolved fairly (39 percent vs. 55 percent).

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CBP Employees Want Free Parking

Customs and Border Protection (CBP) inspectors assigned to Washington Dulles International Airport in Dulles, Va., and John F. Kennedy International Airport (JFK) in New York, N.Y., currently pay their own daily parking costs without reimbursement—and they want that to change.

Calling this expense a “financial burden,” three congressmen on Oct. 6



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wrote to CBP Commissioner Robert Bonner asking him to consider reimbursing these employees for parking.

As of Oct. 1, the yearly parking fee for CBP officers at Dulles increased to \$325. At JFK, the yearly fee is \$600.

“Imposing substantial parking fees on law enforcement officers engaged in homeland security activities is counter-productive,” stated the letter from Reps. Frank Wolf, R-Va., Tom Davis, R-Va., and Pete King, R-N.Y.

They pointed out that the cost of reimbursement for parking at Dulles for every CBP officer would amount to \$65,000 per year. “For such a small cost, CBP will add a huge benefit to attract new officers and improve morale among existing employees,” the letter stated.

CBP is part of the Department of Homeland Security (DHS). Other DHS employees—those working for the Transportation Security Administration—who are assigned to Dulles already have their parking costs reimbursed.

“These officers work side by side and are aware of this discrepancy, creating a dramatic morale issue for CBP,” the letter stated.

King is the new chairman of the House Homeland Security Committee; Davis chairs the House Government Reform Committee; and Wolf is a member of the House Appropriations Committee.

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Performance Payments to Contractors Unjustified

A recent Department of Energy inspector general (IG) audit showed that \$4 million in contractor incentives were issued by the Office of Civilian Radioactive Waste Management (OCRWM) to Bechtel SAIC Company, LLC, despite the company's

missed milestones and poor quality of delivered work products.

The IG conducted the audit to determine whether the performance-based incentives program was maximizing Bechtel's performance of its duties. The IG concluded that approximately 10 percent of the incentive fees (\$4 million out of \$40 million in incentives) were unjustifiable because of the company's failure to meet performance expectations.

In December 2001, Bechtel submitted site recommendations that contained inconsistencies in models and designs, and the additional time spent correcting the errors resulted in a 22-day delay in reaching the milestone date.

OCRWM initially withheld \$854,673, but later paid all but \$125,786 of the incentive.

In addition, the incentive fee documentation blamed the delay on circumstances beyond the contractor's control, failing to cite Bechtel's substandard work submission as a factor.

The IG also found that Bechtel was given the full incentive for developing an Issue Management System, even though the system was determined to be unacceptable, and OCRWM performance monitors recommended to reduce the fee by \$500,000. Again, the fee justification cited circumstances beyond the contractor's control.

The IG recommendations to OCRWM included the following:

- setting acceptable quality levels for each incentive;
- implementing specific fee reduction procedures to adjust payments when expectations are not met; and
- setting milestones and performance expectations to be modified on a timely basis.

OCRWM management agreed with the IG's recommendations and said it intends to implement a corrective action plan.

To read the full report, go to www.ig.doe.gov/pdf/ig-0702.pdf.

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Mental Health Task Force for Military

The Senate on Oct. 6 accepted an amendment to the Department of Defense (DoD) Appropriations Bill that would establish a Defense Task Force on Mental Health to develop a new plan for addressing mental health issues within the armed forces.

"We have not dealt with such an extraordinary number of returning war veterans in decades, and our Iraq veterans are facing unique mental health issues as a result of the intense and protracted urban combat they faced in Iraq," said Sen. Barbara Boxer, D-Calif., who sponsored the amendment.

"It's time to do a comprehensive review of existing mental health services, develop new initiatives and ensure that our veterans are receiving the best possible care we can provide."


The Defense Task Force on Mental Health would consist of representatives from each branch of the armed forces, a Department of Veterans Affairs (VA) representative, a Department of Health and Human Services representative, and private sector professionals who have expertise in the area of mental health.

Boxer said the task force would primarily be charged with assessing and making recommendations to improve DoD's mental health services. Among other issues, the task force would examine:

- how prevalent mental health conditions are among members of the armed forces;
- how well existing programs work to prevent, identify and treat mental health conditions;
- how best to reduce or eliminate barriers to care, including the stigma associated with seeking help for mental health related conditions;
- how smoothly veterans who receive mental health care transition from the DoD health care system to the VA health care system; and
- how accessible long-term care is for members of the Individual Ready

Reserve, the Selected Reserve, and for discharged, separated or retired members of the armed forces.

The amendment was endorsed by the National Gulf War Resource Center.

Both the House and Senate have passed their versions of DoD appropriations bills and now the two houses are in conference to settle differences in the two versions. Once the president signs the bill, it will become law. 

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Waxman Questions Unexplained Spending

Rep. Henry Waxman, D-Calif., House Committee on Government Reform ranking minority member, recently questioned why millions of dollars have been spent by a government office that was supposed to close several years ago.

Independent Counsel David Barrett was appointed in May 1995 to investigate allegations that then Housing and Urban Development (HUD) Secretary Henry Cisneros made false statements to the FBI during a background check regarding payments made to an ex-mistress.

Four years after Barrett's appointment, Cisneros pleaded guilty and paid a fine of \$10,000. Then, in 2003, a three-judge panel ordered Barrett to close down his investigation.

Waxman is questioning why, after this order was issued, Barrett is still in operation today and is still spending "substantial taxpayer dollars."

According to Waxman, Barrett's office has spent an average of about \$2 million per year for the last 10 years. In the six years since Cisneros' guilty plea, Barrett's office spent \$11.6 million.

Expenditures in the last two years—since the three-judge panel ordered Barrett to close his investigation—included:

- more than \$125,000 on travel;
- more than \$600,000 for contractual services; and

- more than \$1.7 million on personnel compensation and benefits.

Waxman wants to know who received the personnel compensation for the time period since Barrett's office submitted its final report in August 2004, and for what work.

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In Brief

DHS Personnel Changes Struck

The U.S. District Court for the District of Columbia last week rejected a motion by the Department of Homeland Security (DHS) to narrow an injunction already placed on the agency which blocked it from implementing a controversial personnel management system (known as MaxHR) on Aug. 1. The National Treasury Employees Union (NTEU) and other federal employee unions had filed a lawsuit against DHS and the Office of Personnel Management, alleging provisions of MaxHR were illegal. In August, the court said that "significant aspects" of the system "fail to conform to the express dictates" of the Homeland Security Act legislation establishing DHS. The court issued an opinion that forbade the agency from implementing those parts of the MaxHR that address collective bargaining, mitigation of disciplinary actions, and the role of the Federal Labor Relations Authority as an arbiter of disputes between management and employees.

CIA Officers Unscathed

The CIA Office of the Inspector General recently issued a report recommending that the head of the CIA convene a performance accountability board to judge the performances of some CIA officers working against al-Qaida prior to 9/11. "After great consideration of this report and its conclusions, I will not convene an accountability board to judge the performances of any individual CIA officers," stated CIA Director Porter Goss in response to the report. He added that officers were faced with

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Nuclear Security Administration Starts Hiring Program

The Future Leaders Program (FLP) at the National Nuclear Security Administration (NNSA), part of the Department of Energy, successfully filled 29 out of 30 open spots for new employees this summer.

FLP Manager Jerry Truax said that NNSA is not unlike many other agencies inasmuch as the work force averages about 50 years old and about 50 percent of employees will be eligible to retire in the next five years.

Truax said NNSA has been around since 2000, and is staffed with former DOE employees. He added that, until FLP was established, there was not a focus on recruiting new college graduates.

The program has only on-campus recruiting. Truax said they looked at schools close to where the new employees would be working and also looked at rankings to identify good engineering schools. (Out of the 29 new workers, 24 are engineers.)

FLP interviewed at 15 schools. There was a minimum GPA requirement of 2.8, but the average GPA was 3.25. The people selected for the program were recent college graduates. About 20 percent had master's degrees. About 20 percent had some previous work experience. Their age range was 21 to 35, with the average age about 25.

Some of the incentives provided were:

- every employee received a \$5,000 recruitment bonus (about the norm for engineers, NNSA found); and

- they were provided an opportunity to participate in the student loan repayment (SLR) program.

Most interns—20 of the 29 new employees—are participating in the SLR program. Truax said the group owes an average of \$16,000 in student loans.

When new employees join the agency through FLP, they sign continued service agreements to commit to two years after the FLP two-year program. This runs simultaneously with their obligations for the SLR program.

Part of the program requires rotational assignments. Everyone in a field office has to rotate into headquarters for 60 days and vice versa; there is also another 30-day rotational assignment.

The costs of the program, including travel, training and salary, are estimated at about \$100,000 per person per year.

There are three separate curriculum for participants: engineering (24 new employees in 2005), information technology (2 in 2005) and business management (3 in 2005).

"We're really pleased with the diversity of the group," Truax said. White males make up 28 percent of the group, 62 percent are minorities and 72 percent are either minorities or women.

For more information and a list of recruiting campuses, visit the program's Web site at www.nnsa.doe.gov/futureleaders/.

For a link to previous Young Feds columns, please visit FEND's Web site at www.FederalDaily.com/YoungFeds.

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inadequate resources. He said certain individuals were asked to step-up and they were "stars" who had excelled in their areas. "Unfortunately, time and resources were not on their side," Goss stated. "Singling out these individuals would send the wrong message to our junior officers about taking risks."

FAA Whistleblower Awarded

The Office of Special Counsel (OSC) announced last week its selection of Anne Whiteman, an 18-year air traffic controller at Dallas Fort Worth International Airport (DFW), as a recipient of the Special Counsel's Public Servant Award. She disclosed to OSC that air traffic controllers and management at the DFW Terminal Radar Approach Control routinely covered up serious operational errors,

in violation of a Federal Aviation Administration order. An investigation by the Department of Transportation inspector general confirmed that air traffic controllers and management systemically covered up operational errors. Operational errors at DFW are now reported and investigated in a timely manner. All personnel involved in the cover-up of operational errors were disciplined and all air traffic controllers were required to undergo training and recertification. Whiteman is the fifth federal employee to receive this non-monetary award.

ICE Targets Alien Contractors

Three language instructors working at Fort Bragg's Army Special Operations Command were arrested recently. Immigration and Customs Enforcement (ICE) announced the arrest of

two Indonesian nationals and a Senegalese national who were working as contract language instructors at the U.S. Army John F. Kennedy Special Warfare Center and School. The complaints allege that two of the men used counterfeit resident alien cards and made false statements to gain employment with BIB Consultants, Inc., which is a Florida-based company that provides contract language instruction services to U.S. Special Forces and other U.S. military personnel at Fort Bragg. The third man was in the U.S. illegally. ICE said it has been making an effort to target and remove illegal aliens working at sensitive sites around the nation, including airports, sea-ports, nuclear plants, chemical plants and defense facilities. To read about other recent cases, go to www.ice.gov/graphics/news/newsreleases/articles/051005raleigh.htm.

Questions to Ask Before Buying a Mutual Fund

In spite of the “so-so” performance of stock and bond markets in recent years, Americans continue to invest in mutual funds. In fact, according to the Investment Institute of America, at the end of April 2005, American investments in mutual funds totaled \$7.9 trillion.

Nevertheless, recent conflicts of interest and illegal “late trading” activities by mutual fund managers (as well as other activities not in the best interests of mutual fund investors) have prompted the Securities and Exchange Commission (SEC) to issue new rules and regulations affecting the selling of mutual funds by licensed brokers.

Among the new regulations, brokers and security firms are now obligated to provide prospective mutual fund investors information about the “true” costs of mutual fund purchases, information about matters including “revenue-sharing” payments that some firms in the past received from mutual fund companies, and other possible conflicts of interest that the broker and the security firm may have.

Even with these new regulations, there are a number of questions that mutual fund buyers should ask before they decide to invest, including:

How does the broker or financial advisor get paid? Unlike years ago when licensed brokers were usually paid through upfront sales commissions or “loads,” now there is a broad array of compensation arrangements for brokers.

This can make it difficult for the average investor to sort out the possible conflicts of interest for the broker or the broker’s firm. In particular, there are funds sold with an “upfront” commission (“A” shares). Brokers who sell these shares may also receive small “trail” commissions year after year with no commission when the fund shares are sold.

There are also “B” shares that are usually subject to higher annual expenses as well as a contingent deferred sales charge if the shares are sold within several years of purchase. “C” shares compensate brokers through higher annual charges that continue indefinitely.

Finally, some investors who buy funds through financial advisors do not pay commissions. They instead pay a fee (such as 1 percent of the value of the assets being managed) to the advisor. To understand these costs, a prospective investor should read the fund prospectus where distribution-related costs and fees are presented.

Is there a financial “incentive” to propose one share class rather than another? Unfortunately, the answer to this question is too often yes.

Purchasers of large amounts of a fund may be entitled to commission discounts if they purchase “A” shares. Those com-



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mission discounts also make “A” shares less attractive to the selling broker, resulting in the broker having a financial incentive to push “B” shares instead. That is conduct that SEC and National Association of Securities Dealers (NASD) regulators have targeted in several enforcement actions.

Is the broker sharing information about discounts? A new SEC rule, effective for fund prospectuses dated after Sept. 1, 2004, requires funds to provide more information on discounts (“breakpoints”). After a purchase that is eligible for a breakpoint discount is made, the advisor should check that the fund purchaser receives the discounts.

Is there a financial incentive to promote one mutual fund over another? In recom-

mending a mutual fund to an investor, a broker may be working from his or her firm’s list of “preferred” offerings. Getting on that list may be partly a function of the fund’s management company having made certain payments to the broker’s firm.

There can also be conflicts in the promotion of funds managed by a unit of the brokerage’s firm, known as “proprietary” funds. Under NASD rules, individual brokers cannot be paid extra for selling “proprietary” funds.

What does the mutual fund company get in exchange? What payments does the broker’s firm receive from companies involved with this mutual fund? Because of regulatory scrutiny through the NASD and the SEC, brokerages are giving investors more information than they have in the past on the once “hidden” payments that they receive from mutual fund firms.

How does owning this fund compare to the costs of comparable funds? Among the costs or fees that are part of a fund’s annual operation expenses are 12b-1 fees and management fees. Money is subtracted from fund assets to pay for the management of the fund’s portfolio and for the expense of maintaining shareholders accounts.

Unfortunately, many fund investors pay too little attention to fund fees because they do not get billed for them directly. High expenses can severely affect an investor’s returns over time in the form of diminished returns.

Potential investors of mutual funds therefore need to take a “proactive” stand before deciding on a fund. They need to ask their brokers not only what the total investment return is of a fund, but also for a summary of all commissions, expenses or fees that could affect a fund’s “overall” investment return.

Most of these questions can be answered by reading a fund prospectus, which should be given to the investor prior to fund purchase. Potential fund purchasers should remember that past investment returns are no guarantee of future performance.

Union Protests Proposal to Close Military Schools

The American Federation of Government Employees (AFGE) last month decried a Department of Defense (DoD) proposal to shut down elementary and secondary schools at Fort Bragg and Camp Lejeune in North Carolina.

Under this proposal, military families would have to have their children educated in neighboring North Carolina county school systems, the union said.

In a bipartisan effort organized by Rep. Robin Hayes, R-N.C., to sway opinion at the Pentagon, Republican and Democratic congressional representatives sent a letter to Under Secretary of Defense for Personnel and Readiness David Chu asking him to "ensure that the elementary and secondary schools at Fort Bragg and Camp Lejeune continue to be staffed with DoD civilian employees."

The letter also emphasized that military base schools are more sensitive to the special needs of children with deployed relatives and are "integral to the retention and recruitment of dedicated military personnel."

Signatories on the letter included Hayes, Sens. Elizabeth Dole, R-N.C., and Richard Burr, R-N.C., and Reps. Bob Etheridge, D-N.C., Walter B. Jones, R-N.C., and Mike McIntyre, D-N.C.

"Closing down Fort Bragg and Camp Lejeune schools won't save taxpayers a significant amount of money now and won't save them any money in the long term," said AFGE President John Gage.

In support of keeping the schools open, AFGE also pointed to a 2001 study commissioned by the National Educational Goals Panel, which concluded that students at military base schools scored higher on achievement tests than students at civilian schools.

Gage went on to say, "This is a jobs issue as well. Loyal employees will lose their jobs for no reason if this plan is allowed to move forward."

Reading Program on Military Installations

The Senate approved an amendment to the 2006 Defense Appropriations Bill that will establish pilot projects that promote early childhood literacy on military installations.

Sen. Saxby Chambliss, R-Ga., member of the Senate Armed Services Committee, sponsored the amendment, which was accepted on Oct. 6 as a part of the Senate version of the 2006 defense funding bill.

Both the House and Senate have approved the bill; it is now in conference between the two congressional houses before it becomes law.

The pilot program described in the legislation is facilitated by Reach Out and Read (ROR), a national non-



Elizabeth Saloom
grew up in a family of federal employees, with both parents working for the Department of State. She has been writing the Federal Families column since March 2003.

profit organization that encourages parents to read aloud to their children by providing children's books at participating pediatric centers called program sites.

Currently, ROR has 2,337 program sites nationally and plans to launch 300 new program sites per year for the next five years, which will double the number of children receiving books and guidance. Chambliss' amendment will open opportunities for program sites to also be established on military bases.

"It is important that the children growing up on our nation's military installations are allowed the option to participate in the same

federally funded programs that are offered to nonmilitary families and children," said Chambliss.

"While I am pleased that the program has a strong presence in Georgia, I am also aware that none of the participating sites are on any of our 13 military installations.

"My amendment will establish [ROR] pilot programs on a limited number of military bases across the country."

ROR began as a collaborative effort between pediatricians and early childhood educators. These two groups found that pediatricians and nurse practitioners were in a unique position to promote early literacy because of their regular contact with children and their parents through well-child check-ups.

ROR builds on this relationship and helps families and communities encourage early literacy skills so that children will enter school better prepared for success in reading.

Free Mail for Servicemembers

House Government Reform Committee Chairman Tom Davis, R-Va., announced on Sept. 29 that his committee approved legislation to establish a program to provide free postage on certain mail items sent to members of the armed forces serving overseas. The Mailing Support to Troops Act of 2005, H.R. 923, introduced by Rep. Vito Fossella, R-N.Y., requires the secretary of the Department of Defense to create a one-year program under which members of the armed forces serving in Iraq or Afghanistan would receive a monthly voucher that can be redeemed to pay the postal expenses of sending one letter or parcel to the servicemembers. The servicemember can then send these vouchers to anyone they choose, such as family members or loved ones. "Even in this age of e-mails, instant messages and video chats, nothing provides the morale boost to a soldier, sailor, airman or marine like regular packages or letters from home," Davis said. "This legislation will ease the financial burden of keeping in touch for the families and loved ones of our fighting men and women."

Whistleblower Wins Right to Hearing

This is a classic case of retaliation," said Richard S. Wood, a Defense Department employee. "I revealed that there was stealing going on at my job, and in return my bosses punished me for opening my mouth."

"But you already quit your job—what do you want from your employer now?" his friend asked.

"I want the right to a hearing and I want to be compensated for my annual leave."

*Was Wood punished for whistleblowing?

FACTS: Wood is a former assistant commissary officer at the Fort Belvoir Commissary in Fairfax County, Va. In June 2003, he filed a complaint with the Office of Special Counsel (OSC) alleging that he received a written reprimand, a detail to another position and a notice of proposed removal in retaliation for his whistleblowing activity.

After exhausting his claims before OSC, Wood appealed to the Merit Systems Protection Board (MSPB) but the administrative judge (AJ) dismissed the appeal. Wood appealed again.

Wood made five protected disclosures to OSC:

1. He reported possible thefts by four store employees to Robin Schmidt, the former store director.
2. He reported the same possible thefts to Schmidt's successor, Cheryl Conner.
3. He informed Conner's successor, Randall Eller, that Schmidt had failed to take any action on the reported thefts.
4. He again reported the possible thefts and Schmidt's inaction to the Army Criminal Investigation Division.
5. Further, he reported to Eller that he had found several boxes of discount coupons from store customers, estimated by Wood to be worth in excess of \$90,000, which had not been properly redeemed during Schmidt's tenure.

Under the Whistleblower Protection Act, disclosures made by employees in the normal performance of their duties cannot constitute protected disclosures.

DECISION: However, the full MSPB said neither investigating nor reporting such wrongdoing was a part of Wood's normal assigned duties.

Wood stated that, when he was assigned to the commissary in March 2000, he was informed that the store had inventory problems and had failed its inventory check the previous year.

Shortly thereafter, he began to suspect that the store's shortages might be caused by employee thefts when his wife showed him a cash register receipt from a purchase that appeared to have been improperly suspended.

After reviewing the receipt, Wood became concerned that employees were stealing from the cash registers and suspending the transactions to hide the thefts. He then reviewed the record of suspended transactions by commissary cashiers,

and he identified four employees whose involvement he suspected. After interviewing the employees, he informed Schmidt of his suspicions.

MSPB said it is not debatable among reasonable people that Wood's disclosures relating to Schmidt allege serious errors by agency management.

Wood further asserted that, in 2002, Eller informed him that the agency was investigating Wood for not reporting the thefts earlier.

Wood alleged that Eller initiated the personnel actions within a short period after learning of Wood's disclosures against Schmidt. Wood further alleged that Eller had informed him that Schmidt, who remained in Wood's chain of command, was upset and angry at him because of his disclosures.

Finally, Wood asserted that, while he was serving on the detail, he heard from co-workers, agency employees and vendor employees that Eller and Schmidt were "out to get" him because he had damaged Schmidt's reputation.

MSPB stated that it was an error that the AJ decided Wood's whistleblowing was not a contributing factor in the personnel actions taken against him.

MSPB decided that Wood was entitled to a hearing. Wood had resigned, but he still sought damages of restoration of annual leave that he used to avoid part of the detail that he as assigned.

MSPB remanded the appeal for further adjudication.

To read the full court order, go to www.mspb.gov/decisions/2005/wood_dc040382w1.html.

(*Wood v. DoD, MSPB, No. DC-1221-04-0382-W-1, 9/1/05*)

**The dialogue is entirely fictitious, but names, facts and ruling are from a real case.*

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